



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

Dr. Daniel J. McGowan,

Respondent.

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Docket No. CWA-07-2014-0060

Dated: September 23, 2016

ORDER SCHEDULING HEARING

The prehearing exchange process is complete, and there are no motions pending in this matter. Therefore, this matter may be scheduled for hearing.

1. Agency policy strongly supports settlement. Complainant shall file a status report on or before **October 21, 2016**, and again on or before **November 10, 2016**, as to the status of any settlement discussions.
2. All non-dispositive prehearing motions, such as motions for subpoenas or motions in limine, must be filed on or before **October 14, 2016**. This deadline does not apply to motions to supplement the prehearing exchange.
3. On or before **November 4, 2016**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate, as much as possible, to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after a hearing. Stipulated exhibits are lists of: (1) proposed exhibits in the Prehearing Exchange that the parties agree are admissible in evidence; and (2) proposed exhibits to which the opposing party does not object with respect to authenticity. Stipulated testimony is direct testimony or part of direct testimony, in written form, of a witness who will appear at the hearing and be available for cross examination, which testimony the parties agree is admissible in evidence.
4. The parties are reminded that under 40 C.F.R. § 22.19, any document or exhibit not included in the prehearing exchanges may not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify at the hearing, unless the conditions of 40 C.F.R. § 22.22(a) are met. If a party wishes to add a proposed witness or exhibit to its prehearing exchange, it must file a timely motion to supplement the prehearing exchange no later than **November**

14, 2016, explaining why the witness or exhibit was not included in the initial prehearing exchange. Motions filed after this date will not be considered absent extraordinary circumstances.

5. The parties may, if they wish, file prehearing briefs, which may substitute for an opening statement at the hearing. The deadline for filing these briefs is **November 18, 2016**. I prefer that the parties file their briefs electronically,¹ although they also may be faxed and/or hand-delivered to me by that date in accordance with 40 C.F.R. Part 22. Complainant's brief should at a minimum specifically state each count of the Complaint, and each claim therein, which are to be tried at the hearing, and indicate which counts/claims are not. Respondent's brief at a minimum should identify each of the defenses that the Respondent intends to pursue at the hearing.
6. Individuals requiring special accommodations at the hearing, including translators or wheelchair access, should contact the Headquarters Hearing Clerk, as soon as possible so that appropriate arrangements can be made. In any event, such notification should be made no later than **October 28, 2016**. The Headquarters Hearing Clerk may be contacted as follows:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
angeles.mary@epa.gov
(202) 564-6281

7. The hearing in this matter will be held beginning promptly at **8:30 a.m. Tuesday, November 29, 2016**, and will continue as necessary through **Friday, December 2, 2016**, in **Lincoln, Nebraska**.²

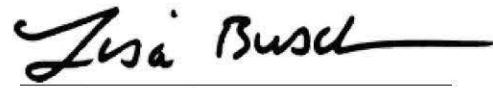
RESPONDENT IS HEREBY ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE BEING SHOWN THEREFOR, MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST HIM. COMPLAINANT IS HEREBY ADVISED THAT FAILURE TO APPEAR AT THE HEARING MAY RESULT IN DISMISSAL OF THIS MATTER.

If any party does not intend to attend the hearing, or has good cause for not being able to attend the hearing as scheduled, it shall notify me at the earliest possible moment.

¹ For further information about electronic filing, the parties should consult the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges, available on the Office of Administrative Law Judges website, www.epa.gov/oalj, as well as the specific URL for electronic filing, found at: https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm.

² I will notify the parties of a more specific location in the Lincoln, Nebraska area once it has reserved a courtroom.

SO ORRDERED.

A handwritten signature in black ink that reads "Lisa Busch". The signature is written in a cursive style with a long horizontal flourish extending to the right.

M. Lisa Buschmann
Administrative Law Judge

In the Matter of Dr. Daniel J. McGowan, Respondent.
Docket No. CWA-07-2014-0060

CERTIFICATE OF SERVICE

I hereby certify that electronic copies of the foregoing **Order Scheduling Hearing**, dated September 23, 2016, was emailed to the following on September 23, 2016, in the manner indicated. I hereby certify that copies of the foregoing **Order Scheduling Hearing**, dated September 23, 2016, was mailed to the following on September 26, 2016, in the manner indicated.



Kelly Nishikawa
Attorney Advisor

Original and One Copy by Hand Delivery to:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

Copy by Electronic Mail to:

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Dated: September 23, 2016
Washington, DC